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ABSTRACT

This booklet serves as an introduction to the special education process in North Dakota as well as a parent's guide to rights and services provided under the law. The document begins with a brief description of Public Law 94-142, the Eduction for All Handicapped Children Act, and the process for receiving special education services. Section II describes the child referral and evaluation process which leads to a placement decision. Section III provides an explanation of the process used to develop and write an Individualized Education Program. The following section includes general guidelines to assist parents in working with the school to obtain services for their handicapped child. The booklet concludes with a description of procedural safeguards for ensuring due process of parents' rights, citing specific sections of appropriate federal regulations. (JDD)

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A PARENT'S GUIDE TO EDUCATION OF THE HANDICAPPED CHILD

Department of Public Instruction
Dr. Wayne G. Sanstead, Superintendent
Bismarck, North Dakota 58505

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A PARENT'S GUIDE TO EDUCATION OF THE HANDICAPPED CHILD

Prepared by:

Carole E. Stowitschek, Ph. D.

Mountain Plains Regional Resource Center
Utah State University
Logan, Utah

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INTRODUCTION

The purpose of this booklet is to provide parents with information needed to secure services for handicapped children in North Dakota. Included in this booklet are five sections, each dealing with different content.

SECTION I: **Public Law 94-142.** Section I contains a brief description of Public Law 94-142 and The Special Education Process.

SECTION II: **Referral, Evaluation, and Placement.** This section provides a description of the child referral and evaluation process leading to a placement decision.

SECTION III: **Individualized Education Program and Placement.** Section III provides an explanation of the process used to develop and write an Individualized Education Program (IEP).

SECTION IV: **Tips for Parents.** Included in this section are general guidelines to assist parents in working with the school to provide services to the handicapped child.

SECTION V: **Procedural Safeguards.** This section explains the rights of parents and their handicapped child, including the due process hearing.

This booklet is intended to be an introduction to the special education process as well as a parent guide to rights and services provided under the law. In this document the word "parent" is used to represent: **a)** natural parents, **b)** legal guardians, or **c)** surrogate parents who represent tne child in the educational setting. It will not answer all your questions but should acquaint you with services, rights, and procedures so that you have a general knowledge base and can pursue additional information on your own.

SECTION I:

PUBLIC LAW 94-142

PUBLIC LAW 94-142

On November 29, 1975, the Education for All Handicapped Children Act, as amended by Public Law 94-142, was signed into law. This landmark legislation guarantees the right of **all** handicapped children (ages 3-21) to a free, appropriate public education. This means that any child identified as handicapped by a diagnostic team is entitled to an education program appropriate to the special education or related services needs of that child. Services are to be provided at public expense with no cost to the parents or guardians.

ELIGIBILITY FOR SERVICES

One question frequently asked by parents is, "How do I know if my child is eligible for special education services?" It is the intent of both P.L. 94-142 and North Dakota state law to offer educational services to all identified handicapped children regardless of their handicapping condition. Some children have handicapping conditions so obvious or so severe that there is really no doubt that the condition exists. For other children, the handicap may be hidden and not recognized as a problem by parents until the child enters school.

Special education services are available to handicapped children who are identified as:

- mentally retarded
- hard of hearing
- deaf
- speech impaired
- visually impaired
- seriously emotionally disturbed
- orthopedically impaired
- other health impaired
- specific learning disabled
- deaf-blind

See Appendix A for P.L. 94-142 definitions of handicapping conditions.

THE SPECIAL EDUCATION PROCESS

In order to receive special education services, a child must be referred, assessed by a team of qualified professionals, and determined to be handicapped. The following step by step process is used by schools to determine who is eligible for services, and to insure that appropriate services are provided.

1. REFERRAL

A parent, classroom teacher, or other concerned individual refers the child for evaluation. A parent who believes their child is having difficulty learning may request that the school evaluate their child.

2. PARENT NOTIFICATION AND CONSENT FOR EVALUATION

Parents must be notified that their child has been referred for evaluation. Parental consent must be given in writing before the child can be evaluated.

3. EVALUATION

An evaluation, appropriate for the child's suspected handicap, is scheduled and carried out by a team of professional persons. This evaluation should include formal and informal testing, systematic observation, a physical exam (if needed), and a review of the child's history.

4. EVALUATION RESULTS SHARED

The team members, including the parents, share results in a meeting. The team decides: **a)** Is the child handicapped? **b)** If so, what special services are necessary? **c)** What program can provide these services?

5. DEVELOPMENT OF IEP AND PLACEMENT DECISION

Based on the results of the evaluation, an Individualized Education Program (IEP) is developed. The parents and, when appropriate, the child participate with the educators in the process. The IEP may be written during this meeting or in a subsequent meeting. It should include:

- present level of functioning
- general goals and objectives
- time lines
- extent of participation in regular education
- evaluation criteria

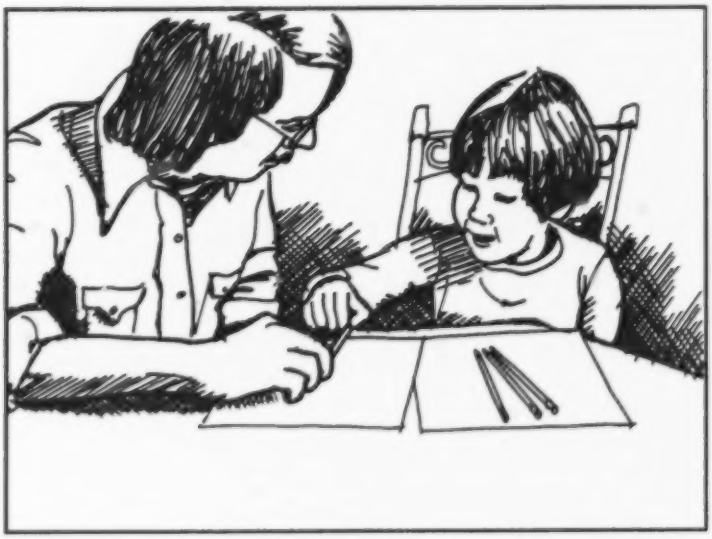
The placement or setting in which the special education services will be delivered is determined at the IEP meeting. Parents must give written consent indicating approval of the placement decision.

6.	**PROGRAM IMPLEMENTATION**	The IEP is initiated, providing the child with special education and related services in the most appropriate and least restrictive setting.
7.	**ANNUAL REVIEW**	The IEP must be reviewed and revised as often as needed, and at least once each calendar year.

NOTE: If you cannot come to an agreement with your school district about your child's evaluation, IEP, and/or placement, you may request mediation and/or a due process hearing. See Section V on Procedural Safeguards for more information.

SECTION II:

REFERRAL, EVALUATION, AND PLACEMENT



REFERRAL, EVALUATION, AND PLACEMENT

Children are referred for evaluation on the basis of need. The referral may be made by a classroom teacher, parent, or another individual concerned with the child's education. Following a referral the evaluation process is initiated. The purpose of the evaluation is to acquire a multifaceted, complete picture of the strengths and weaknesses of your child. This is done by a team comprised of school personnel and parents. As parents, you are an important part of the team since you can provide input about your child's history and are knowledgeable about your child's behavior in different environments. Team members might include a school psychologist, special education teacher, physician (if medical information is needed), audiologist (if a hearing test is needed), or other specialists needed to assess conditions specific to your child. The composition of the team will depend upon the perceived needs of your child. After the evaluation is completed it is summarized in written form and will be made available to you.

PRIOR NOTIFICATION

The school district must provide written notice to the parents of any child referred for evaluation. The notice must be written in such a way that it is easily understood.

As a parent, you must receive written notice that your child has been referred for evaluation and may be identified as handicapped. Notice must be sent to you in the native or primary language of the family. If the native language is not in written form, oral interpretation must be provided. The letter should state the reason why the evaluation is suggested, the types of tests your child will be given, and how the results will be used.

A parent must provide written permission before the school may conduct the evaluation. You should request more information if you have questions regarding the evaluation or notice.

ACCESS TO RECORDS

All of your child's school records (for example, cumulative files, documents, and other personally identifiable materials and information relating to the child) are accessible, upon request, for your review. You may ask for an explanation of any information in the record you do not understand. You are entitled to a copy of the record for your own use. The school has up to 45 days to provide this copy although most schools do not require this much time. The school may request a reasonable fee for the service of copying the child's report. If you find information which you believe to be inaccurate or misleading, contact your local school administrator about the process to amend the educational record.

EVALUATION

Listed below are some points to remember when your child has been referred for evaluation:

A. The evaluation must be conducted by a team of specialists assessing all areas related to the suspected disability, including (where appropriate) health, vision, hearing, social and emotional status, general intelligence, academic performance, communication status, and motor abilities. Evaluation should **never** consist of a single test or be conducted by a single person.

B. When a child's handicap necessitates the provision of medical services, any educationally relevant information from such medical records must be considered along with other reports in making educational decisions.

C. The evaluation should be conducted in the language the child knows best. Consideration must be given to the child's culture. Deaf or blind children must have assessment procedures appropriate to their handicaps. If you feel your child may have been discriminated against during evaluation, discuss your concerns with the team.

D. Observational information from a variety of settings will be considered by the team along with informal inventories and formal test results.

E. Parents play an important role in the evaluation team. Day-to-day experiences and observations of your child can provide the team with information that cannot be gained from other assessments.

F. You are entitled to your own copy of the evaluation results for your file. Ask the team to explain any parts of the summary you do not understand.

G. If you disagree with the results of the evaluation done by the school, you have the right to an independent educational evaluation at public expense. However, the school may initiate a due process hearing to show that it's evaluation is appropriate. If the final decision is that the evaluation is appropriate, you still have the right to an independent evaluation, but <u>not</u> at public expense.

H. If the child has had a previous evaluation, information from this evaluation should be considered at the team meeting.

I. If you disagree with the evaluation results and the subsequent decisions by the school you can request a due process hearing. See Section V on Procedural Safeguards for more information.

SECTION III:

THE INDIVIDUALIZED EDUCATION PROGRAM AND PLACEMENT

THE INDIVIDUALIZED EDUCATION PROGRAM AND PLACEMENT

The goal of the evaluation process is to determine: **a)** your child's unique needs, **b)** if your child requires a special education service, and **c)** an educational placement that is appropriate for your child's needs. If your child is evaluated and determined to be handicapped, your child should be placed in an educational setting that best suits their individual needs. To the maximum extent possible, children with handicaps are to be educated with children who are not handicapped. This concept is called least restrictive environment (LRE). Often this concept leads to a mutual learning situation for both handicapped and nonhandicapped children. In addition, the more separate the classroom or school environment, the more isolated the child is from the mainstream of society. The concern of the IEP team is to see that your child is placed in a setting as least restrictive as possible while still meeting the needs of the child.

Every handicapped child is entitled, by law, to an Individualized Education Program or IEP. Your school district is responsible for the development of an IEP specifically tailored to meet the needs of every handicapped child it serves. The IEP must be reviewed and revised as needed, and at least once each calendar year.

Parents of handicapped children should become knowledgeable of the IEP process so that they may best serve the interests of their child. The IEP meeting is a vehicle to improve or provide a communication link between the school and parents. As equal partners they can work together to provide the best services possible for the handicapped child. It is important for parents to be involved in their child's IEP development and to monitor the child's progress after the IEP is in place in the classroom. School personnel are strongly dependent upon parents who are concerned about the education their child receives and who understand and follow their child's progress in school.

WHAT IS AN IEP?

An IEP is a written statement that describes the child's current level of functioning and proposes a plan for an appropriate educational experience based on the child's unique needs. In addition, it is a commitment of school resources to enable the child to receive special education and related services, and is a management/monitoring tool to ensure that services are meeting the needs of the child. The table below lists the IEP components and examples.

IEP COMPONENT	EXAMPLE
1. Present Levels of Educational Performance.	
This section should provide information pertaining to the child's general physical, intellectual, social, and emotional functioning.	For a child who functions within the mentally handicapped range of overall intellectual ability, present levels of educational performance statements might include: 1. Positive social relations with peers outside of school and in self-contained classrooms. 2. Academic skills in communication area are weak as indicated by observation and assessment. 3. 90% hearing loss left ear, 85% right ear.
2. Annual Goals.	
This section identifies what the team expects the child to accomplish during the next year and should reflect long term planning.	For a child who has a need in the area of mobility, an annual goal may be stated: To increase self-directed movement when John is positioned on his side and given a verbal cue, he will turn his head and trunk to roll onto his front.
3. Short Term Instructional Objectives.	
Each goal will have short term objectives that represent the intermediate steps between the present level of educational performance and the attainment of the annual goal. An objective is to be written in measurable, observable and definable terms.	A short term objective for a child learning to compute a weekly budget might be: Given five coins of five different denominations, Kelly will arrange them in order from most to least valuable at least four out of five times.

IEP COMPONENT	EXAMPLE

4. Special Education and Related Services Provided the Student.

Related services means transportation and such developmental, corrective, and other supportive services as required to assist a handicapped child in benefiting from special education.

The amount of time (by day or week) the child will be receiving the service will be estimated by the team.

Related services for a child might include one or more of the following:

a. Transportation
b. Speech pathology
c. Physical and/or occupational therapy
d. Social services
e. Parent counseling and training
f. Psychological services
g. School health services

5. Extent of the Child's Participation in Regular Educational Programs.

The participation of the child may vary from full time to no participation in the regular education program. Decisions are based on a child's special needs and limitations.

Regular classroom participation for a child whose major handicapping condition is speech and language impairment might include:

Bob will remain in the regular classroom. Related services will be provided by a consulting speech pathologist and regular classroom teacher.

6. Date for Initiating Services and Duration of Services.

Services are identified by the team. Objectives may be sequential with the ending date of one objective corresponding to the beginning date of the next. Occasionally dates may overlap.

The team will estimate the approximate length of time it will take the child to accomplish each goal and objective. It may be presented on the IEP as follows:

Date Initiated: 10/4/85
Estimated Achievement Date: 6/4/86

7. Evaluation Procedures for Determining Whether the Short Term Objectives are Being Achieved.

The team must state the specific formal and informal assessment instruments that will be used and the specific criteria by which progress toward meeting an objective will be measured.

Information is needed to make decisions regarding the extent to which the child is making progress. For example, if the child is emotionally disturbed the IEP team may use monthly progress reports to indicate a decrease in the number of physical fights that occur on the playground.

THE IEP MEETING

You can best assist your child if you attend the meeting and participate in the discussion. If you do not understand something ask for clarification.

Meeting Arrangements

The IEP meeting shall be held no later than 30 days after the determination of the child's need for special education services. You must be notified of the purpose, date, time, location, and participants of the meeting. The meeting may be held without your presence only if you officially give up consent, if you appoint another person, or if attempts to set up a mutually convenient meeting have failed.

The school must take whatever action is necessary to ensure that you understand the reasons for, and proceedings of the meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

Who is Involved?

According to P.L. 94-142 the following people are involved in the IEP meeting:

1. A representative of the public agency (other than the child's teacher) who is qualified to provide or supervise special education services.
2. The child's teacher.
3. One or both of the child's parents.
4. The child (when appropriate).
5. Other individuals at the discretion of the parent or agency.

Decisions of the IEP Team

Decisions made by the IEP team at the meeting include:

A. ***Is the child handicapped?*** The team will determine if your child meets one or more of the handicapping conditions as defined in Appendix A.

B. ***Placement of child for educational purposes.*** Because every handicapped child is different, a variety of placements are available. Your child should be placed in an educational setting that fits the unique needs of your child but allows as much contact as possible with children in regular school placements.

C. ***What special education and related services will help the child benefit from the total education experience?*** The IEP team will design a program of special education and related services tc your child's needs and abilities. Related services are supportive services needed to help the child benefit from special education. Examples are special transportation, physical or occupational therapy, and psychological services.

The IEP process provides an opportunity to share concerns of parents and the school. As a parent, you have the right to express your views on the educational decisions suggested for your child. If you feel that either the placement decision or the IEP are not appropriate for your child, you should contact the school and work toward reaching a mutually agreeable solution. If you cannot reach agreement with the school you may consider requesting mediation and/or a due process hearing. If another team member disagrees with the IEP, a signed statement from that member will be prepared, dated, and placed in the file.

CONFLICT RESOLUTION OPTIONS

Mediation

If a problem arises with the education of your child, begin to search for a solution by talking with your child's teacher. State your concerns as clearly as possible indicating that you wish to work with the school to find a solution. If this discussion is unsatisfactory, talk with the school principal or the director of special education in your special education unit. Frequently, problems can be resolved at this level without going to a formal due process hearing. Sometimes an impartial third party, a mediator, may be used to assist the school and the parent in reaching an agreement during an informal meeting. Mediation provides a process for both sides in a conflict to seek a compromise solution to the dispute.

Due Process Hearing

The school must give the parents an opportunity to have a due process hearing concerning any matter relevant to the child's identification, evaluation, placement, or the provision of a free appropriate public education. Either the school or parents may initiate a due process hearing on matters regarding the handicapped child. When a hearing has been requested by the parents or the school, it must be conducted by an impartial person, called the due process hearing officer. The decision of the hearing officer will be reached within 45 days after the application for Request for Due Process Hearing has been approved. If either the parent or school is dissatisfied with the hearing decision, they may seek relief through the civil court system. The school must inform the parents about free or low-cost legal aid in the nearby geographical area. Copies of the due process hearing procedures are available from the local special education units or the Department of Public Instruction, Division of Special Education, State Capitol, Bismarck, ND 58505.

Complaint System

When problems concerning the provision of services to handicapped children arise and involve matters of policy, procedure, and practices of the state, a school district, or special education unit, you may need to pursue the filing of a complaint with the Department of Public Instruction. The complaint may be filed by an individual, agency, group, or organization. Within 60 working days the State Director or designee will investigate the complaint and reach a decision. Persons dissatisfied with the Department of Public Instruction's final decision may request a review by the Secretary of Education, Washington, D.C 20202. Copies of the complaint system procedures can be obtained from the Department of Public Instruction, Division of Special Education, State Capitol, Bismarck, ND 58505.

SECTION IV:

TIPS FOR PARENTS

TIPS FOR PARENTS

You, as a parent of a handicapped child, are a valuable resource to the school. You have a wealth of knowledge about your child that no one else can provide. In addition, you have a vested interest in helping the school to provide your child with a good educational experience so that your child may continue to learn. You and your school need to work as partners to better educate your child.

In the list that follows, you will find some suggestions to help you work with your school in providing good educational services to your child.

1. **Know your rights.** Read the manuals prepared for parents available from your school or the Department of Public Instruction.

2. **Mark important meeting dates on your calendar.** Include reminders of actions to be taken or information shared.

3. **Attend any meeting that relates to your child's education.** Be active. Ask questions. Come to the meeting on time.

4. **Take notes during meetings and telephone conversations.** Save these notes as well as all correspondence and reports from the school. Make sure your notes are dated.

5. **Write all requests to the school.** Keep a copy of all correspondence.

6. **Write down questions as you think of them.** This will help you to plan for meetings or remind you to call your child's teacher or other personnel for further information.

7. **Let the teacher know you are interested in your child's education.** Tell the teacher your ideas about your child. (For example, identify skills your child does well or those when help is required.) Ask to visit the classroom. Take charge of the situation by initiating the contact. **Do not** wait until the teacher calls you about a problem.

8. **Observe your child in the classroom.** When called upon, does your child respond like others in the class? Does your child participate in classroom activities? If you observe what you feel are problems, talk them over with the teacher. It is a good idea to observe your child in the classroom prior to the preparation of the IEP. Go to the IEP meeting with suggestions for programming which you feel are important to your child's progress.

9. **Volunteer to help your child with homework.** Ask for specific work to be done at home. Call the teacher if you need clarification.

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10. **If possible, volunteer to help in the classroom.** This may be especially helpful if your child requires specialized equipment. It also allows you the opportunity to see how your child functions with the teacher and peers.

11. **Ask for samples of your child's work.** If you would like more information, make an appointment with the teacher to ask questions. You can play an important role in the IEP monitoring process because you see your child at home and in other settings outside the school.

12. **Observe to be sure your child is happy in school and doesn't look for reasons to stay home.** Watch for signs indicating that your child may be having adjustment problems.

13. **Look for evidence that your child is making progress toward the goals and objectives specified in the IEP.** If you are not satisfied or if you need more information, call your child's teacher and set up a conference. If needed, the teacher can assist in reconvening the IEP team to discuss your concerns.

14. **If you have a difference of opinion concerning services to your child, try to work out the problem with the school.** Begin by communicating with your child's teacher.

15. **Get to know the parents of other handicapped children.** They can offer you needed moral support. Contact your local parent organization or advocacy network. If there is no local organization, work with other parents to organize one. If you are unsure how to contact a regional or state organization, or would like to organize a local parent support group, contact the Department of Public Instruction, State Capitol, Bismarck, ND 58505.

16. **If your child has already been identified as handicapped, talk to your child's teacher before the first day of school.** Explain your child's handicap, special needs, potential problems, etc. If necessary, discuss how your child's handicap could be explained to classmates to help them better understand people with special needs.

17. **Have your child participate in IEP meetings, when appropriate.** Encourage your child to: **a)** know that their educational rights are guaranteed under the law, **b)** understand and be able to explain their handicap and special needs, and **c)** be able to communication the kind of services needed to meet their needs.

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SECTION V:

PROCEDURAL SAFEGUARDS

PROCEDURAL SAFEGUARDS

Public Law 94-142, the Education for All Handicapped Children Act, includes the rights to which you, as a parent of a handicapped child are entitled. The rights are set forth in this section. We encourage you to read it carefully.

In this explanation of rights we have used the word "school" to mean the place where your child is being educated. This may be your neighborhood public school, the educational part of a hospital, or some other residential setting.

SUMMARY OF YOUR RIGHTS AS THE PARENT OF A HANDICAPPED CHILD

Your rights and those of your handicapped child may be summed up in the following key terms:

Notice - Before your child is tested or placed in a special educational program, you have a right to be notified of what the school plans to do.

Consent - You must give your consent before special tests are conducted and before your child is placed in a special educational program.

Evaluation - You have a right to have a full evaluation of your child's individual education needs.

Records - You have a right to know what records are kept on your child and a right to see them.

Confidentiality of Information - With the exception of certain individuals (school officials, for example, and teachers with legitimate educational interests) no one may see your child's records unless you give your written permission.

Least Restrictive Environment - You have a right to have your child educated with nonhandicapped children to the maximum extent appropriate.

Hearings - If at any point you and the school do not agree on an educational program for your child, you have the right to request a hearing. This means that you may seek a formal review if an agreement cannot be reached concerning the identification, evaluation, placement, or educational program of your child.

The remainder of this section is devoted to describing these rights. The citations at the left side of the page refer to the specific section of the federal regulations that have been paraphrased, in the interest of clarity.

NOTICE

As a parent you have a right to:

Reg.300.504(a)(1)(2) ...be notified before the school: **a)** identifies, assesses, or places your child on grounds of having a handicapping condition; **b)** changes an identification, assessment, or placement that has been made; or **c)** rejects your request that these actions be taken.

Reg.300.505(b)(1)(2) ...receive all such notices in writing and in the language you speak and understand best. If there are parents whose native language is not a written language, the school officials must see that: **a)** the notice is explained to them orally

Reg.300.505(c)(1)(2)(3) or in a mode of communication they understand; **b)** they understand the information they have been given; and **c)** there is written evidence that this requirement has been met.

Reg.300.505(a)(3) ...be notified of each evaluation procedure, test, record, or report the school will use as the basis for making any decision(s) regarding your child.

Reg.300.505(a)(2) ...a description of the plan for your child with an explanation of why it is recommended, what other options were considered, and why the other options were ruled out.

Reg.300.505(a)(4) ...be informed of any other relevant factors school officials considered in their recommendation or rejection decision.

CONSENT

Your written consent is necessary before the school can:

Reg.300.504(b)(1)(i) ...test your child individually with any tests that are not generally given to most other students prior to placing your child in special education.

Reg.300.504(b)(1)(ii) ...place your child in a special education program for the first time.

Reg.300.500(a) Before your consent is given, the school must explain in your native language what you are agreeing to, and the school must be sure that you understand it. The consent form must describe what

Reg.300.500(b)	you are agreeing to, list which of your child's records (if any) will be released, and specify who will receive them.
Reg.300.500(c)	Your consent is to be given freely, and you may withdraw it at any time.
Reg.300.504(b)(2)	If you do not give your consent, your child's basic right to attend school and participate in school activities will not be affected by your refusal.
Reg.300.504(c)(1) Reg.300.504(c)(2)(i)	If you refuse to give your consent, and the school administrators believe what they propose is in your child's best interest, the school may request a hearing (subject to state laws and procedures). An independent hearing officer would then decide whether your child should be tested or provided special education and/or related services without your consent.
Reg.300.504(c)(2)(ii)	You have a right to attend this hearing and tell why you refuse to give your consent. If the hearing officer upholds the school, the school may then evaluate or initially provide special education and related services to your child without your consent unless you appeal the decision in civil court.

EVALUATION AND PLACEMENT PROCEDURES

Reg.300.531	Before your child receives any special education services, a full and individual evaluation must be conducted. This means your child will be given specific tests which are not usually given to most school children. In this circumstance your child has a right to:
Reg.300.532(a)(1)	...be tested in the language or other mode of communication which he or she speaks and/or understands best.
Reg.300.530(b)	...be tested in such a manner that results are not affected by race or culture.
Reg.300.532(a)(2)(3)	...be tested by qualified professionals using valid tests which are given according to proper instructions.
Reg.300.532(e)	...be evaluated by a group of professionals including at least one teacher or specialist who is knowledgeable about the kind of problem your child is thought to have.
Reg.300.532(f)	...be tested in all areas related to the suspected problem.

Reg.300.532(b) ...be tested through procedures which determine specific areas of educational need, not just an intelligence ("IQ") test.

Reg.300.532(d) ...have his or her educational program determined on the basis of more than one test.

Reg.300.534(b) ...receive a complete re-evaluation every three years, or more frequently if necessary, or if requested by you or your child's teacher.

Reg.300.534(a) ...have his or her individualized education program (IEP) reviewed annually.

Reg.300.532(c) Tests must be given to children with impaired hearing or vision, or restricted ability to move or speak, in such a way as to measure potential ability or what has been learned, and not the degree of impairment, unless measuring impairment is the purpose of the test.

When looking at test results and deciding on the best placement and program for your child, the school must:

Reg.300.533(a)(1) ...collect information from many sources.

Reg.300.533(a)(2) ...guarantee that this information is documented and carefully considered.

Reg.300.533(a)(3) ...ensure that the placement decision is made by a group of professionals including persons who know about your child and are professionally capable of interpreting the test results and then relating those results to appropriate options.

Reg.300.533(a)(4) ...ensure that the placement decision is made in such a way that your child may be educated, to the extent appropriate, with children who are not handicapped.

Reg.300.533(b) If it is determined that your child is handicapped and is in need of special education and related services, an individualized education program (IEP) must be developed.

Reg.300.346 An IEP is an individualized educational program that must include:

Reg.300.346(a) ...a statement of your child's present levels of educational performance.

Reg.300.346(b) ...a statement of annual goals and short term objectives for your child.

Reg.300.346(c) ...a statement of the specific special education and related services to be provided.

...the extent to which your child will be able to participate in regular education programs.

Reg.300.346(d) ...the projected dates for beginning special education and how long it is expected to continue.

Reg.300.346(e) ...an objective way of determining, at least annually, whether your child is achieving the short term objectives that were set.

Reg.300.343 This IEP must be decided upon in a meeting that includes:

Reg.300.344(a)(1) ...a representative of the school your child attends (this must be someone who is qualified to provide or supervise special education).

Reg.300.344(a)(2) ...your child's teacher.

Reg.300.344(a)(3) ...you, as the child's parent(s).

Reg.300.344(a)(4) ...your child, if appropriate.

Reg.300.344(a)(5) ...other participants as indicated by either you or the school.

If you want additional information about your child's IEP ask your child's teacher or an official of your child's school.

INDEPENDENT EDUCATIONAL EVALUATION

Reg.300.503(a)(b) If you do not agree with the evaluation provided by the school -- that is, if you don't think they gave the right tests or reached the right conclusions -- you may have an independent educational evaluation conducted at public expense. An "independent educational evaluation" means that your child will be tested by a qualified person who is not employed by the school your child attends. The school will either pay for a private evaluation or will arrange for one at no cost to you. However, the school also has a right to a hearing to show that its evaluation was appropriate. If the hearing officer decides that the school's evaluation was appropriate, you still have the right to an independent educational evaluation, but not at public expense.

Reg.300.503(a)(3)(i)

Reg.300.503(a)(3)(ii)
Reg.300.503(b)

Reg.300.503(a)(2) The school must inform you, upon your request, where independent evaluations are available.

Reg.300.503(c) If you have an independent evaluation conducted at your own expense, the results of this evaluation:

Reg.300.503(c)(1) ...**must** be considered by the school in any decision regarding your child's education, and

Reg.300.503(c)(2) ...**may** be presented as evidence in a formal hearing (see "Hearings" section).

Reg.300.503(d) If an independent evaluation is requested by a hearing officer as part of a "due process hearing," the evaluation must be at public expense.

Reg.300.503(e) Independent evaluations conducted at public expense must meet the same criteria (e.g., qualifications of examiner) as the evaluations initiated by the school.

RECORDS

You have a right to:

Reg.300.565 ...receive, upon your request, a list of the types of education records kept on your child, where they are maintained, and how you can gain access to them.

Reg.300.562(a) ...inspect and review any of your child's records. The school must comply with your request to do so:

- without unnecessary delay
- before an IEP meeting or hearing
- within 45 days

Reg.300.566(b) The school may not charge to search for or collect the information.

You have a right to:

Reg.300.562(b)(1) ...have someone at your child's school explain or interpret any item in your child's records.

Reg.300.562(b)(2) ...receive copies of the records if this is the only way to ensure that you will be able to review and inspect them. The school

Reg.300.566(a) may charge a fee for the copies, if such a charge does not prevent you from inspecting and reviewing the records.

Reg.300.562(b)(3) ...have a representative inspect and review the records.

Reg.300.562(c) The school must assume that you have the authority to inspect and review your child's records unless they have been informed that you do not have this right (for example, because of legal action such as custody).

Reg.300.567(a)
Reg.300.567(b)
Reg.300.567(c) If you feel that any statements in your child's records are wrong or misleading, you may ask the school to change them. The school must either change such statements in a reasonable period of time or formally refuse to do so. If they refuse, school officials must inform you of their refusal and advise you of your right to a hearing on the matter.

Reg.300.568 If you request such a hearing, the school must hold one.

Reg.300.570 This hearing does not necessarily follow the process described in the "Hearings" section of this explanation of rights. The hearing may be conducted by any school official who does not have a direct interest in its outcome.

Reg.300.569(a)
Reg.300.569(b) If the hearing is decided in your favor, school officials must change the information and inform you of the change.

Reg.300.569(c)(1)(2) If the information is held to be accurate by the school and a decision is made not to change the information, you have the right to add your own statement to the record. Your statement must be kept as long as the contested part of the overall record is kept. If that record is shown to anyone, your statement must be included.

CONFIDENTIALITY OF INFORMATION

Reg.300.572(a) The school is responsible for protecting the confidentiality of your child's education records by:

Reg.300.572(b) ...naming the individual who is responsible for ensuring the confidentiality of records.

Reg.300.572(c) ...guaranteeing that all persons who collect or use such information receive training in the state's policies and procedures regarding confidentiality.

Reg.300.572(d) ...keeping, for public inspection, a list of employees who are permitted access to these records.

Reg.300.564 ...permitting you to see only that information which relates to your child when records contain information on more than one child.

Reg.300.571(a)(1) ...requiring your consent before your child's education records are given to anyone not involved in your child's education.

Reg.300.571(a)(2) ...requiring your consent before using your child's records for any purposes other than those related to providing special education and related services. Certain states may have

Reg.300.571(c) policies and procedures which apply in the event that you decline to give this consent. These procedures could allow the school to send copies of the records to the requesting person or agency, under certain circumstances, despite your objection.

Reg.300.573(a)(b) ...informing you when confidential information on your child is no longer needed. This information must be destroyed at your request. The school should remind you that these records may be needed later, for example, to secure social security benefits. If you decide to have confidential information destroyed, the school may retain information typically found in a child's permanent school record (e.g., name, address, attendance records, grades).

Reg.300.561(a) States must have procedures for identifying handicapped children and must publish a statewide notice in newspapers or other media to inform parents of the requirements regarding identification of handicapped children.

The notice must include:

Reg.300.561(a)(1) ...information as to the languages in which the notice is available.

Reg.300.561(a)(2) ...a description of the types of children on whom confidential information is kept and the uses of that information.

Reg.300.561(a)(3) ...a description of how this information is kept and protected.

Reg.300.561(a)(4) ...a description of the rights of parents and children regarding this information.

LEAST RESTRICTIVE ENVIRONMENT

Your child has a right to:

Reg.300.550(b)(1) ...be educated, to the extent appropriate, with children who are not handicapped.

Reg.300.550(b)(2)	...be in a regular classroom unless the nature or severity of the handicap is such that he or she cannot receive a satisfactory education in the regular classroom by using additional aids and services.
Reg.300.551(b)(1)	...have a range of placements available, including regular school classes, special classes, special schools or institutions, residential placements, and home instruction.
Reg.300.553	...participate to the extent appropriate with nonhandicapped children in extra-curricular and nonacademic activities.
Reg.300.552(c)	...attend the school he or she would attend if not handicapped, unless the IEP calls for a different placement.

Your child's educational placement must be:

Reg.300.552(a)(1)	...reviewed annually.
Reg.300.552(a)(2)	...based on the IEP.
Reg.300.552(a)(3)	...as close to home as possible.
Reg.300.551(a) Reg.300.511(b)(2)	Every school must have available a variety of settings to meet the educational needs of handicapped children. This range must include any placement which is needed to implement the child's IEP. Provision must also be made for supplying any supplementary services needed when a handicapped child is in a regular class.
Reg.300.552(d)	In selecting the least restrictive environment for your child, school officials must consider any possible harmful effects that a particular placement or service(s) may have on your child.

It is the responsibility of the state department of education to:

Reg.300.554	...make arrangements with public and private institutions to ensure that to the extent appropriate, handicapped children are educated with nonhandicapped children.
Reg.300.555(a)(b)	...ensure that teachers and administrators are fully informed about the implications of the concept of the least restrictive environment and receive training and assistance in its application.
Reg.300.556 (b)(1)(2)	...ensure that all schools in the state are carrying out these requirements.

If there is evidence that a school is not meeting P.L. 94-142 standards, the state department of education is obligated to review the school's performance and to see that any shortcomings are corrected.

HEARINGS

Reg.300.506(a)

If at any time you cannot come to an agreement with the school regarding your child's education, you have the right to ask for an impartial hearing. A hearing may be held on any matter relating to the identification, evaluation, or placement of your child or the

Reg.300.506(b)

provision of a "free appropriate public education." Hearings are to be held by either the state department of education or the school directly responsible for your child's education.

To obtain a hearing, you should make a written request to the person who is responsible for the education program your child attends.

HEARING OFFICERS

An impartial hearing officer will be assigned to preside over any such hearing and arrive at a decision. To ensure impartiality, a hearing officer may **not** be:

Reg.300.507(a)(1)

...an employee of a public agency (school system, institution, etc.) which is involved in the education or care of your child.

Reg.300.507(a)(2)

...anyone who has a personal or professional interest which would conflict with objectivity in the hearing.

Reg.300.507(c)

Each school must keep a list of persons who serve as hearing officers and their qualifications.

HEARING RIGHTS

Rights to which both you and the school are entitled include the right to:

Reg.300.508(a)(1)

...be accompanied and advised by legal counsel and by persons with special knowledge of the problems of handicapped children.

Reg.300.508(a)(2)

...present evidence, cross-examine and compel the attendance of witnesses.

Reg.300.508(a)(3) ...prohibit the introduction of evidence that had not been revealed to you or to the school at least five days before the hearing.

Reg.300.508(a)(4) ...receive a written or recorded verbatim record of the hearing.

Reg.300.508(a)(5) ...receive a written record of the findings of fact(s) and decisions of the hearing.

You also have the right to:

Reg.300.506(c)(1)(2) ...be told by the school where free or low cost legal help is available. The school must give you this information at any time you request it or whenever a hearing is to take place.

Reg.300.508(b)(1) ...have your child attend the hearing if you wish.

Reg.300.508(b)(2) ...open the hearing to the public if you wish.

Reg.300.512(d) ...have the hearing conducted at a time and place reasonably convenient to you.

Reg.300.512(a)(1)(2) Within 45 days of receipt of your request for a hearing, the hearing officer must reach a decision and mail you a copy of the decision.

Reg.300.512(c)
Reg.300.509 The hearing officer may grant an extension to this time period at the request of either party. The decision of the hearing officer is final unless either you or the school chooses to appeal.

APPEALS

Reg.300.510(a)(b) If your hearing was held by your school rather than the state, and if you are dissatisfied with the decision of the hearing officer and would like to appeal it, you must inform the state department of education of your desire to do so. The state department of education will then conduct an impartial review of the hearing. The officer conducting the review will:

Reg.300.510(b)(1) ...examine the entire hearing record.

Reg.300.510(b)(2) ...ensure that the hearing was conducted properly.

Reg.300.510(b)(3) ...seek more evidence if necessary. If a hearing is held to receive this additional evidence, then the hearing rights previously described would apply.

Reg.300.510(b)(4) ...give both parties an opportunity to present arguments.

Reg.300.510(b)(5)(6) ...make an independent decision and give both parties a copy of the decision.

Reg.300.510(c) The decision of the impartial review conducted by the state must be reached and a copy of it mailed to you and the school within 30 days of the request for the review (unless an extension is granted by the reviewing official). The decision is final unless either party chooses

Reg.300.512(b)(1)(2) to bring civil action and pursue the matter in court. During the time that the hearing and appeals process is taking place, your child is to remain in his or her present placement, unless you and the school

Reg.300.511 agree otherwise. If the dispute concerns the initial admission of your child to public school, then with your consent, your child

Reg.300.513(a)(b) will be placed in a public school program until the completion of the proceedings.

Reg.300.511 If your hearing was held by the state and you are not satisfied, you can bring civil action in a state court or a U.S. district court.

SURROGATE PARENTS

Each school must guarantee that rights of children are protected when:

Reg.300.514(a)(1) ...no parent can be identified.

Reg.300.514(a)(2) ...the whereabouts of a parent are not known.

Reg.300.514(a)(3) ...the child is a ward of the state.

Reg.300.514(b) It is the school's duty to appoint a stand-in or surrogate, or to see that one is appointed. Either the state or your school must have a method of appointing surrogate parents.

Reg.300.514(c)(1) The school or state may select a surrogate in any manner permitted by state law, but must make sure that the person selected:

Reg.300.514(c)(2)(i) ...does not have a conflict of interest.

Reg.300.514(c)(2)(ii) ...is qualified to represent the child.

Reg.300.514(d)(1)(2) ...is not an employee of a public agency involved in the education or care of the child (a person is not considered an employee solely because he or she serves as a surrogate).

Reg.300.514(e)(1)(2) The surrogate may represent the child in all matters relating to identification, evaluation, placement, and the provision of a free appropriate public education.

A copy of the full text of the Public Law 94-142 Regulations is available upon request from:

Department of Public Instruction
Division of Special Education
State Capitol
Bismarck, ND 58505

Telephone: (701) 224-2277

APPENDIX A:

Public Law 94-142 Definitions of Handicapping Conditions

Reg. 300.5 Handicapped children.

(a) As used in this part, the term "handicapped children" means those children evaluated in accordance with Regs. 300.530-300.534 as being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multihandicapped, or as having specific learning disabilities, who because of those impairments need special education and related services.

(b) The terms used in this definition are defined as follows:

(1) **"Deaf"** means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

(2) **"Deaf-blind"** means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children.

(3) **"Hard of Hearing"** means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the definitions of "deaf" in this section.

(4) **"Mentally retarded"** means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(5) **"Multihandicapped"** means concomitant impairments (such as, mentally retarded-blind, mentally retarded-orthopedically impaired, etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blind children.

(6) **"Orthopedically impaired"** means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures).

(7) **"Other health impaired"** means:

(I) having an autistic condition which is manifested by severe communication, and other developmental and educational problems; or

(II) having limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affects a child's educational performance.

(8) **"Seriously emotionally disturbed"** is defined as follows:

(I) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

(A) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(C) Inappropriate types of behavior or feelings under normal circumstances;

(D) A general pervasive mood of unhappiness or depression; or

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(II) The term does not include children who are socially maladjusted, unless it is determined that they are seriously emotionally disturbed.

(9) **"Specific learning disability"** means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(10) **"Speech impaired"** means a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance.

(11) **"Visually handicapped"** means a visual impairment which, even with correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children.

NOTES